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HUMAN RIGHTS COMMITTEE

Fifty-first session

SUMMARY RECORD OF THE 1357th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 29 July 1994, at 10 a.m.

Chairman: Mr. ANDO

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GE.94-18057 (E)

The meeting was called to order at 10.25 a.m.

ANNUAL REPORT OF THE COMMITTEE TO THE GENERAL ASSEMBLY THROUGH THE ECONOMIC AND SOCIAL COUNCIL UNDER ARTICLE 45 OF THE COVENANT AND ARTICLE 6 OF THE OPTIONAL PROTOCOL (agenda item 6) (continued)

1. The CHAIRMAN invited the members to resume their consideration of the documents comprising the draft annual report of the Committee, some of which were not available in all the languages.

Chapter VIII. Consideration of communications under the Optional Protocol (CCPR/C/51/CRP.1/Add.7)

2. The CHAIRMAN said that the paragraph numbering and relevant references to annexes and sections at various parts of the document would be filled in in due course.

Introduction

3. The introduction was adopted.

Section A. Progress of work

4. Ms. EDELENBOS (Centre for Human Rights) provided information on the current status of communications to update that given in the draft report. Appropriate references to the numbers and names of cases on which the Committee had adopted views at the current session would also be included.

5. Mr. POCAR, referring to the third paragraph, noted that the wording of the last sentence was the same as in previous reports. He expressed particular concern regarding the words "some 100 further communications", since the reference to the number did not seem necessary. Furthermore, he questioned the appropriateness of the phrase "the Committee does not intend to consider their cases", since such cases were not generally submitted to the Committee but were dealt with by the Special Rapporteur.

6. Mrs. HIGGINS suggested the phrase "the Committee will not consider their cases".

7. Section A, as amended, was adopted.

Section B. Growth of the Committee's case-load under the Optional Protocol

8. Ms. EDELENBOS (Centre for Human Rights) provided information to be included in section B regarding the number of cases dealt with as well as the views and decisions adopted by the Committee under the Optional Protocol.

9. Section B, as amended, was adopted.

Section C. New approaches to examining communications under the Optional Protocol

10. Mrs. CHANET suggested that a reference should be included to the renewal of her mandate as Special Rapporteur on new communications.

11. Section C, as amended, was adopted.

Section D. Individual opinions

12. The CHAIRMAN said that a number of additional individual opinions had been appended to the Committee's views since the draft report had been issued. They would be taken into account in the final version.

13. Section D was adopted on that understanding.

Section E. Issues considered by the Committee

Introduction

14. The introduction was adopted.

Paragraph 1. Procedural issues

Subparagraph (a). The concept of victim (Optional Protocol, art. 1)

15. Subparagraph (a) was adopted.

Subparagraph (b). No claim under article 2 of the Optional Protocol

16. Mrs. HIGGINS, referring to the second paragraph, said that it was not customary for the Committee to refer to "a prima facie case". She suggested that that expression should be replaced by "substantiation sufficient for the purposes of admissibility".

17. Subparagraph (b), as amended, was adopted.

Subparagraph (c). Competence of the Committee and incompatibility with the provisions of the Covenant (Optional Protocol, art. 3)

18. Mrs. HIGGINS, referring to the second sentence of the last paragraph, said that for the sake of clarity and the benefit of non-members of the Committee, a reference should be made to article 3 of the Covenant. She suggested that the sentence should read: "Other cases declared inadmissible inter alia because of incompatibility with the provisions of the Covenant, within the meaning of article 3, are ...".

19. Subparagraph (c), as amended, was adopted.

Subparagraph (d). No simultaneous examinations of the same matter (Optional Protocol, art. 5, para. 2 (a))

20. Mrs. HIGGINS said that she had had great difficulty in understanding the last sentence. She therefore suggested that the latter half should be amended to read: "it has considered a number of cases previously examined by the European Commission and then submitted to the Committee against States which have not made such reservation ...".

21. Mr. WENNERGREN said that the phrase "cases previously examined by the European Commission" was somewhat misleading, for not all the cases in question had been examined in the sense that the Committee considered communications under the Optional Protocol.

22. Mrs. EVATT recalled that the Committee had recently dealt with two French communications, the issues and proceedings in which were the same as those brought before the European Commission. It might be worthwhile mentioning those cases under the subparagraph.

23. Mr. SCHMIDT (Centre for Human Rights) confirmed that at the current session the Committee had considered two cases (Thierry Trébutien v. France and Jean Glaziou v. France) in which the issues under article 5, paragraph 2 (a), of the Optional Protocol were relevant in the light of the French reservation. He suggested that an additional paragraph should be included giving details of the Committee's findings in that connection.

24. The CHAIRMAN, responding to Mr. Wennergren's query, said that sometimes the terms "consider" and "examine" were interchangeable. Moreover, reservations made by State parties did not always prevent the Committee from taking up cases that were already being examined by other bodies. The problem could be resolved by adhering strictly to the terms of the Optional Protocol. He took it that the Committee could adopt subparagraph (d) as amended by Mrs. Higgins, with an additional paragraph as suggested by Mrs. Evatt.

25. Subparagraph (d), as amended, was adopted.

Subparagraph (e). The requirement of exhaustion of domestic remedies (Optional Protocol, art. 5, para. 2 (b))

26. Subparagraph (e) was adopted.

Subparagraph (f). Inadmissibility ratione temporis

27. Subparagraph (f) was adopted.

Subparagraph (h). Interim measures under rule 86

28. The CHAIRMAN said that a second paragraph would be included to cover the Glenn Ashby case, on which the Committee had adopted a decision that had been made public.

29. Mr. MAVROMMATIS thought that the case concerned could more appropriately be mentioned under a separate heading.

30. Mr. AGUILAR URBINA, Rapporteur, said that, while the Ashby case could be mentioned under subparagraph (h), it could also be included in a separate part of the report concerning States which were not complying with their obligations.

31. The CHAIRMAN said that, in the light of the discussion, a reference to the Ashby case would be included under a separate heading in the chapter under consideration.

32. Subparagraph (h) was adopted.

Section 2. Substantive issues

Subparagraph (a). Right to life (Covenant, art. 6)

33. Subparagraph (a) was adopted

Subparagraph (b). The right not to be subjected to torture or to cruel, inhuman or degrading treatment (Covenant, art. 7)

34. Subparagraph (b) was adopted.

Subparagraph (c). Liberty and security of person (Covenant, art. 9)

35. Subparagraph (c) was adopted.

Subparagraph (d). Treatment during imprisonment (Covenant, art. 10)

36. Subparagraph (d) was adopted.

Subparagraph (e). Liberty of movement (Covenant, art. 12)

37. Mr. MAVROMMATIS suggested that the heading should be changed to read "Freedom of movement".

38. Subparagraph (e), as amended, was adopted.

Subparagraph (f). Guarantees of a fair trial (Covenant, art. 14)

39. Mrs. HIGGINS thought that the statement in the penultimate paragraph of the text that "the failure of the Court of Appeal to issue a written judgement, 13 years after the dismissal of the appeal, barred the complainant to effectively petition the Judicial Committee of the Privy Council" was ambiguous. It was not clear whether the Committee was saying that the failure of the Court of Appeal to issue a written judgement had in fact prevented the complainant from acting or had prevented him from acting effectively. The Committee really meant the former and she therefore proposed that the following text should be inserted after the words "dismissal of the appeal": "effectively barred the complainant from petitioning the Judicial Committee ...".

40. In response to a point raised by Mr. WENNERGREN, Mrs. EVATT proposed that, in the last line of page 10, the words "had not been able" should be replaced by the words "was said to have been unable".

41. Subparagraph (f), as amended, was adopted.

Subparagraph (g). Right to privacy (Covenant, art. 17)

42. Mrs. HIGGINS, noting the numerous references in the subparagraph to Tasmania, said that mention must be made of the State party. She therefore suggested that in the third sentence from the end the words ", transmitted by the State party," should be inserted between the words "argument" and "that".

43. Subparagraph (g), as amended, was adopted.

Subparagraph (h). Freedom of expression (Covenant, art. 19)

44. Mrs. HIGGINS said she did not think that the long last sentence brought out the issue. It was not clear whether there was any such law. She therefore proposed that the sentence should be reworded to read: "The Committee found that the issue of freedom of expression continued to be applicable in the circumstances, that the State party had invoked no law allowing for freedom of expression to be restricted, nor had it established how the restriction of Ms. Kivenmaa's rights was necessary within the meaning of article 19, paragraphs 3 (a) and (b)".

45. Subparagraph (h), as amended, was adopted.

Subparagraph (i). The right to freedom of assembly (Covenant, art. 21)

46. In response to a point raised by Mrs. HIGGINS, Mrs. EVATT proposed that the end of the last sentence should be amended to read: "the Committee found the imposition of such a restriction not permissible ...".

47. Subparagraph (i), as amended, was adopted.

Subparagraph (j). Non-discrimination (Covenant, art. 26)

48. Subparagraph (j) was adopted.

Section F. Remedies called for under the Committee's views

49. Section F was adopted.

50. Chapter VII as a whole, as amended, was adopted.

Chapter VIII. Follow-up activities (CCPR/C/51/CRP.1/Add.8/Rev.1)

51. Mr. AGUILAR URBINA, Rapporteur, said that at the end of paragraph 2, the following sentence should be added: "At its 2nd meeting on 21 July 1994, the Committee added a new rule 95 to its rules of procedure for follow-up which spelt out the mandate of the Special Rapporteur for Follow-Up on Views. The text is reproduced in the annex to the present report".

52. In response to points raised by Mrs. CHANET, Mr. EL SHAFEI and Mrs. HIGGINS, Mr. SCHMIDT (Centre for Human Rights) recalled a French case in respect of which views had been adopted in 1989. It appeared that the law had been changed and that the Senegalese soldiers concerned had received supplementary pension benefits, but the Secretariat had never been officially informed of that development.

53. Referring to a draft document on follow-up that had just been circulated, he said that the "Reply received" column indicated the number of communications that had been submitted against the State party in respect of which violations of the Covenant had been found. The "Deadline not expired" column related to the deadline in respect of the rules adopted at the previous session. Those rules had been implemented in April/May 1994.

54. Mrs. EVATT thought that there was no need for the column entitled "Deadline not expired". The Committee should be concerned only with cases where the deadline had expired. In her opinion, the first column, "Number of communications", should be defined rather more precisely.

55. The CHAIRMAN agreed that the column headings should be clarified so as to make them more understandable to readers of the report.

56. Mrs. HIGGINS said she was inclined to support Mrs. Evatt's proposal to delete the last column. The table was not intended as a kind of summary of the state of play, but rather as an indication of cooperation or non-cooperation.

57. Mr. AGUILAR URBINA, Rapporteur, said that in his view the new table was preferable to the original one. However, all the tables contained in the annex to chapter VIII ought properly to be transferred to chapter V, which would deal with non-compliance. The "Reply received" column should be deleted, and the table confined to States parties which had failed to cooperate.

58. Mr. MAVROMMATIS said it was not entirely clear what was to be transferred to chapter V and what was to remain in chapter VIII. The way the annex was set out did not provide the high-visibility profile that had originally been envisaged. The table that had just been circulated, amended as necessary, would be an improvement, but what he believed was needed was a list of the worst culprits, with some - such as Jamaica and Zaire - singled out for special mention in separate paragraphs.

59. Since there was not enough time to decide the matter on the last day of the session, he suggested that members of the Committee should give it some thought, and submit to the Rapporteur their suggestions as to how the format could be improved. He himself did not think that countries in respect of which only one communication had been submitted should be included, and he would prefer the title to read simply "List of States parties which have failed to cooperate with the Committee".

60. Mrs. CHANET said she fully agreed with Mr. Mavrommatis, who, as Special Rapporteur for Follow-Up on Views, was better qualified than any to pronounce on the question. It would be very harmful if the Optional Protocol were to

have the effect of punishing States simply for not sending a letter, rather than for failing to respect the Committee's decisions, which was something far more serious. Although the tables could be useful, they should be conceived more realistically, since otherwise States would be discouraged from complying with the Committee's decisions.

61. Mrs. HIGGINS said she was shocked to find that the question now under discussion had not been dealt with by the Working Group once the Committee had taken the decisions of principle at the previous session. At that session, it had been recognized that two separate issues were involved: the first was that of non-cooperation, when States parties either did not reply to follow-up correspondence or would not answer on the merits, and the second was that of failure to apply the remedies called for. There should have been proposals for the Committee to consider in a separate chapter on non-compliance.

62. In view of the lack of preparation, it would be better to leave the tables where they were, with an introductory statement explaining that they were not intended to show whether or not States had complied with the Committee's recommendations and the remedies called for in its views. The whole matter could then be left to the following year, but she wished once again to express her great disappointment at the situation.

63. Mr. AGUILAR URBINA, Rapporteur, said he understood Mrs. Higgins' disappointment. A substantial document had been submitted to the Working Group on Communications containing a number of recommendations, but unfortunately the latter had not had time to complete consideration of it, and had merely dealt with the recommendation on the first page.

64. Mr. MAVROMMATIS said that a weakness of the working group system was that groups often lacked detailed written instructions from the Committee, and those should have been given in the present instance. Unfortunately it had not been possible, for a number of reasons, to discuss the tables prepared.

65. Mrs. EVATT said the lesson to be learned from the experience was that mandates needed to be established for each working group: her group had had no guidelines or agenda on the question. Her understanding had been that the group was to deal with the question of overdue reports, but the question of follow-up on views had never been mentioned.

66. The CHAIRMAN said that he as Chairman might be partly to blame: he normally assumed his oral summing up would be noted and taken as guidance by the working groups concerned. It might be better in future to prepare written notes, which could be handed to the Secretariat for use by working groups at the next session.

67. Mr. SCHMIDT (Centre for Human Rights) said that, as already stated, a working paper had been submitted to the Working Group on Communications, but since the latter had had some 42 draft recommendations to deal with, it had not had time to consider it. The table was not meant as a criticism of States parties: it simply reflected the information available to the Secretariat. In that connection, no information had been received from the French Government concerning the case referred to earlier.

68. He supported Mrs. Higgins' proposal to make it clear that the table did not reveal whether or not States parties had complied with the Committee's recommendations but simply reflected whether or not they had cooperated with the Special Rapporteur for Follow-Up on Views.

69. Mr. NDIAYE said he did not think it was worth spending too long on the question. Since there had not been time to consider the issues involved, it would be better to withdraw the draft table, on the understanding that the next Working Group on Communications should be given a clear mandate to make proposals on the question to the plenary.

70. Mrs. CHANET associated herself with that view. For the purposes of the annual report, it needed to be made clear what kind of reply had been received, and what kind of decision had been taken by the State party. The document in its present form was totally unacceptable.

71. Mrs. HIGGINS regretted that there had been a failure on the part of some States parties to comply with their duty under the Covenant to cooperate with the Committee, in the sense of communicating with it. She saw no reason why that should not be reflected in the report. The response by States parties to what the Committee asked of them was a different question, but one which should also in due course be reflected in the report.

72. Her own feeling was that at the present stage it would be better not to have a separate chapter on non-compliance: the information given in the tables should be kept in chapter VIII. The question could then be properly thought out the following year, and a suitable chapter on non-compliance included in the Committee's next annual report.

73. Mrs. EVATT said she was not entirely clear what Mrs. Higgins was suggesting. In her view, the table just distributed could be retained, with the heading "Deadline not expired" deleted, and included in the chapter on non-compliance under an appropriate heading.

74. Mr. AGUILAR URBINA fully supported that suggestion. The table, suitably amended, could be used in the annual report.

75. However, he was more concerned about the implications of the point raised regarding a case involving France. Although the Committee had been informed that in the case of the particular communication concerned, the law had now been changed, the fact remained that if a State party did not happen to have one of its nationals on the Committee, such information might not be conveyed, thus placing the State concerned at a disadvantage, as witnessed by the inclusion of France in the table.

76. He would prefer the procedure proposed by Mrs. Evatt to be followed, with a note being added at the beginning of the table making it clear that the cooperation referred to had nothing to do with any internal measures taken by States to comply with the Committee's decisions.

77. Mr. MAVROMMATIS suggested, for the sake of expediency, that the annex to chapter VIII of the draft report should be replaced by an amended version of the table recently circulated, in which the final column would be deleted, the

reference to France's non-reply would be deleted in view of the information received, and the reference to Australia would be appropriately modified. Thus amended, the chapter would provide guidance for the Working Group on Communications in the pursuit of its important follow-up mandate.

78. Mrs. HIGGINS said, with regard to the table, that the reference to France, as it stood, reflected the reality in so far as the question of replying to requests for follow-up information was concerned, and must be retained. Whether or not that, or any other country, had acted in compliance with the Committee's views was a quite separate matter. Moreover, removal of the reference to France's non-reply could set a dangerous precedent: States parties might obtain the impression that replies were unimportant as long as something in the way of follow-up was being done.

79. Mrs. EVATT agreed basically with the proposal by Mr. Mavrommatis, but said that cases of non-reply should be clearly indicated in the table, without exception. She further agreed with Mrs. Higgins that a distinction must be drawn between replies to requests for information and compliance with the Committee's views.

80. Mr. POCAR said there was clearly some uncertainty as to what the contents of the chapter should be. Would it deal solely with the subject of States parties' cooperation with the Special Rapporteur, or would it also address the question of compliance with the Committee's views? The matter of informal information was also controversial, precisely because of its informal (i.e. uncertain, or perhaps only partial) nature. In the final analysis, what seemed to be lacking for the moment was an accepted criterion for determining non-compliance.

81. Mrs. HIGGINS again stressed the distinction between compliance with the Committee's procedures and compliance with normative obligations. Perhaps what was called for was not just one table, covering the former, but two; the second would show whether or not action had been taken to implement the Committee's views.

82. Mrs. CHANET concurred with the previous speaker. She also agreed that the Committee must not act on the basis of partial information: it must have a complete and up-to-date account of compliance in both of the areas identified by Mrs. Higgins.

83. Mr. FRANCIS endorsed the proposal by Mr. Mavrommatis, as amended by Mrs. Evatt. He was most anxious to be able to present to his country's authorities the table listing replies and the absence thereof, and to be able to demonstrate the grave concern with which the Committee viewed failure to reply to a request for information.

84. Mr. AGUILAR URBINA, Rapporteur, said that given the division in the Committee as to what, if anything, was to be included in the annex to the chapter, he was now inclined to suggest that it should have no annex at all. He further suggested that the Committee should recommend that the next Working Group on Communications should draw up two clear lists - one relating

to replies, and the other to compliance with views, it being understood that the latter list would be based solely on information formally addressed to the Committee by States parties.

85. Mr. PRADO VALLEJO endorsed that suggestion which, he believed, could command consensus.

86. The CHAIRMAN took it to be the Committee's wish to adopt the narrative paragraphs of chapter VIII as presented by the Rapporteur. He further took it to be the general feeling that any list relating to States parties' performance must have the effect of encouraging compliance with the Committee's views, and that no such list existed at present. He suggested, however, that Mr. Francis might make use as he saw fit of the information contained in the draft table that had been circulated.

87. Mr. WENNERGREN proposed that the final sentence of paragraph 5 should be amended to read: "The Committee commends that way of solving the problem of compensation, but at the same time encourages States parties to consider the adoption of specific enabling legislation". As originally drafted, the text gave the unfortunate impression that the Committee might somehow accept the absence of such legislation as grounds for not according monetary compensation; that was certainly not the case.

88. Mr. MAVROMMATIS proposed that, in paragraph 8, the reference to future annual reports should mention "a separate and highly visible section on follow-up activities". The remainder of that paragraph should be amended in the light of the decision not to append any list. A new paragraph might be included to reflect the Committee's particular concern at persistent non-cooperation in the matter of follow-up information, singling out for specific mention States parties that had failed to reply to five or more communications.

89. The CHAIRMAN invited the Committee to adopt chapter VIII as amended in the course of the discussion.

90. Chapter VIII, as amended, was adopted.

91. The draft annual report of the Human Rights Committee as a whole (CCPR/C/51/CRP.1 and Add.1-8/Rev.1), as amended, was adopted.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 3) (continued)

92. Mr. TISTOUNET (Secretary of the Committee) updated the information provided to members at the beginning of the session. The Secretariat had since received the fourth periodic report of Ukraine, submitted one month in advance; the third periodic report of Sri Lanka, which had been due in 1991; and the initial report and core document of the United States of America.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

State party reports to be considered at the Committee's fifty-second session

93. The CHAIRMAN said the Bureau suggested that, at its next session, the Committee should consider the second periodic report of Afghanistan. It further suggested that the Committee should resume its consideration of the second report of the Libyan Arab Jamahiriya. In that connection, he himself had in the course of the current session personally conveyed to the Libyan Mission the Committee's message that in the absence of representatives of that country for the remainder of the examination, it would have no choice but to proceed to adopt its comments. The Bureau further suggested that the Committee should take up the fourth periodic report of Tunisia, the second periodic report of Yemen, the third periodic report of Morocco, and the initial report of Nepal, and that the third periodic report of New Zealand and the initial report of Latvia should be kept in reserve. If he heard no objection he would take it that the Committee wished to adopt those suggestions.

94. It was so decided.

Request to Rwanda

95. The CHAIRMAN said he wished to consult the Committee as to whether a special decision should be taken to request Rwanda, whose report was more than two years overdue, to submit a report on the situation in the country as a matter of urgency. The Committee might wish to authorize him to make such a request, subject to recognition by the United Nations of the legitimacy of the Government in place.

96. It was so decided.

Meeting of chairpersons of the treaty bodies

97. The CHAIRMAN invited the Committee to endorse the Bureau's recommendation that Mr. Pocar should be asked to represent the Committee at the next meeting of chairpersons of the treaty bodies, scheduled for September 1994. If necessary, the senior Vice-Chairman, Mr. Dimitrijevic, might replace Mr. Pocar.

98. It was so decided.

Composition of the working groups of the Committee for the fifty-second session

99. The CHAIRMAN said that, as a result of consultations and with due regard to geographical distribution, it had been agreed that the working groups for the next session would be composed in the following manner:

Working Group on Article 40: Mr. Aguilar Urbina, Mr. Dimitrijevic, Mr. Sadi and Mr. Francis.

Working Group on Communications: Mr. Ban, Mrs. Evatt, Mr. Mavrommatis, Mr. Prado Vallejo and Mr. El Shafei.

100. Mrs. EVATT commended to the attention of the next Working Group on Article 40 the outgoing Group's paper containing a draft general comment relating to article 25 of the Covenant, with additional inputs from other sources. She added for the record that, had it had the opportunity, the outgoing Group would have considered the general application of the Covenant to women, under the umbrella of a possible general comment on article 3.

101. Mr. SCHMIDT (Centre for Human Rights), responding to a point raised by Mr. MAVROMMATIS, said that all the members of the Working Group on Communications would receive by 30 September 1994 a comprehensive file of background material relevant to the follow-up mandate.

CLOSURE OF THE SESSION

102. After an exchange of courtesies, the CHAIRMAN declared the fifty-first session closed.

The meeting rose at 12.30 p.m.